

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: CLARENCE L. JUSTICE

FAA Order No. 2001-3

Docket No. CP98WP0055
DMS No. FAA-1998-4751¹

Served: May 16, 2001

DECISION AND ORDER²

Administrative Law Judge Burton S. Kolko issued an order assessing a \$6,600 civil penalty against the respondent, Clarence L. Justice, because Mr. Justice had not filed an answer or a response to the law judge's Order to Show Cause. Subsequently, Mr. Justice filed an appeal.³ It is decided in this order that Mr. Justice has not shown good cause for failing to file an answer, and as a result, the law judge's order assessing civil penalty is affirmed.

Throughout these proceedings, Mr. Justice has ignored the Rules of Practice, filing his notice of appeal in an untimely fashion and failing to file an answer, a response to the law judge's Order to Show Cause, a response to discovery requests, and a separate

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

² The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. The decisions can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 66 Fed. Reg. 7532, 7549 (January 23, 2001).

³ In the Matter of Justice, FAA Order No. 99-3 (June 11, 1999). In this decision, the Administrator held that good cause had been shown to excuse the late-filing of Mr. Justice's notice of appeal. Mr. Justice did not file a separate appeal brief, but the Administrator construed the notice of appeal as an appeal brief in light of its degree of detail. The Administrator ordered the agency attorney to file a reply brief regarding the issue of whether this matter should be remanded to the law judge for further proceedings.

appeal brief.⁴ Adding to the confusion arising from Mr. Justice's failure to abide by the Rules of Practice's deadlines was his change of address when he entered a treatment center.⁵

The agency attorney served Mr. Justice at his address at 1628 S. Trenton, Tulsa, Oklahoma, with the complaint by certified mail, return receipt requested, on October 27, 1998. The complaint was returned as unclaimed to the agency attorney's office. The agency attorney sent the envelope containing the complaint by regular mail on December 11, 1998. That envelope was not returned to the regional counsel's office.

Subsequently, on December 22, 1998, the agency attorney sent the complaint again by certified mail, but this time addressed to Mr. Justice at the treatment center. Richard Armstrong, Esq., an attorney representing Mr. Justice on another unrelated matter (but not on this case) wrote to the agency attorney, on January 11, 1999, at Mr. Justice's request. Mr. Armstrong explained that Mr. Justice was completing a 6-month in-patient treatment program and that he wanted an extension of time until February 15, 1999, in which to file an answer. Mr. Armstrong wrote that while Mr. Justice wanted to comply with Section 13.209 of the Rules of Practice, he did not

⁴ The respondent is required to file an answer under 14 C.F.R. § 13.209(a). Section 13.209(f) provides that "[a] person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint." 14 C.F.R. § 13.209(f). The requirement to file a notice of appeal within 10 days of service of the law judge's initial decision is set forth in 14 C.F.R. § 13.233(a), and the requirement to perfect an appeal by filing an appeal brief is set forth in 14 C.F.R. § 13.233(c). The requirement pertaining to the time for responding to discovery is provided in 14 C.F.R. § 13.220(d). Also, Mr. Justice did not file his request for hearing with the Hearing Docket, as required under 14 C.F.R. §§ 13.16(e)(2)(ii) and (f), but instead only sent the request to the agency attorney.

⁵ Mr. Justice received the Final Notice of Proposed Civil Penalty at the treatment center on October 5, 1998. Mr. Justice replied to the agency attorney by letter dated October 11, 1998, requesting a hearing. The return address on the envelope was the treatment center's address. Mr. Justice indicated in his request for hearing that he did not have the financial means to pay the civil penalty.

have the books and records that he needed to formulate his answer. Mr. Armstrong explained that Mr. Justice would be released from the treatment program prior to February 15, 1999.

Neither Mr. Armstrong nor Mr. Justice filed a request for an extension of time with the law judge, and the agency attorney did not forward Mr. Armstrong's letter to the law judge. Consequently, the law judge never even had an opportunity to extend the time for filing an answer in this case.

Under Section 13.209(a) of the Rules of Practice in Civil Penalty Actions, "[a] respondent shall file a written answer to the complaint ... not later than 30 days after service of the complaint." 14 C.F.R. § 13.209(a). To date, Mr. Justice has not filed an answer.

To decide whether Mr. Justice had good cause for not filing an answer, the date of service of the complaint must be determined. Section 13.211(g) provides that "[a] document that was *properly addressed*, was sent in accordance with this subpart, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this subpart." 14 C.F.R. § 13.211(g) (emphasis added.) The complaint that the agency attorney originally sent to Mr. Justice at 1628 S. Trenton, Tulsa, OK, on October 27, 1998, was returned marked "unclaimed." If the envelope was properly addressed, then under 14 C.F.R. § 13.211(g), the service of the complaint was valid on October 27, 1998, and the answer was due to be filed no later than 30 days later.⁶ However, whether the envelope was properly addressed is in question.

⁶ Under 14 C.F.R. § 13.211(e), the "mailing rule," Mr. Justice would have had an additional 5 days to file the answer because the complaint was sent to him by mail.

Mr. Justice did receive the complaint addressed to him at the treatment center by certified mail on December 22, 1998.⁷ Assuming that December 22, 1998, was the date of service, the answer was due on January 26, 1999.⁸ However, the law judge was unaware that Mr. Justice wanted an extension of time in which to file the answer. Mr. Armstrong may have informed the agency attorney that Mr. Justice wanted an extension of time in which to file the answer but an agency attorney lacks the power to grant an extension of time.⁹ Consequently, the due date for the answer was not extended because the law judge never granted an extension.

Mr. Justice wrote in his notice of appeal/appeal brief as follows:

From Aug. 4th 1998 through Feb. 4th 1999 I was in a residential treatment center ... I did not have access to financial and personal records to submit to the F.A.A. attorney or the court. By the time I received my mail this hearing process had expired.

In the interim between being released from the [treatment center] and the hearing date, I was relocating to get a fresh start with family in Florida.

Mr. Justice has not demonstrated good cause for failing to file the answer on or before January 26, 1999. Mr. Justice could have responded to the complaint while residing at the treatment center. There is no evidence in the record that Mr. Justice's therapy program itself prevented him from filing an answer. Mr. Justice did not need his financial records to respond to each of the factual and legal allegations in the complaint

⁷ In his letter, Mr. Armstrong referred to the correspondence sent to Mr. Justice by the agency attorney on December 22, 1999.

⁸ See n.5, *supra*.

⁹ The agency attorney has not explained why he did not forward Mr. Armstrong's letter to the law judge. It is possible that the agency attorney did not realize that neither Mr. Armstrong nor Mr. Justice sent a request for extension of time to the law judge.

concerning his alleged actions and violations.¹⁰ It would have been sufficient for him to have asserted as an affirmative defense in his answer that he could not afford the \$6,600 civil penalty proposed in the complaint.

Mr. Justice knew or should have known about the requirement to file an answer. He had received the complaint served on him on December 22, 1998. The cover letter that accompanied the complaint included a paragraph in bold print summarizing the requirement to file an answer in 30 days. Mr. Armstrong's letter indicated specifically that Mr. Justice wanted to comply with the requirements in Section 13.209 for filing an answer. Moreover, even if Mr. Justice thought that the due date had been extended until February 15th -- and he has not asserted that he was under such an impression -- he did not file an answer on, before or even after that date.

In light of the foregoing, Mr. Justice's appeal of the law judge's Order Assessing Civil Penalty is denied. A civil penalty of \$6,600 is assessed.¹¹


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 15th day of May, 2001.

¹⁰ It was alleged in the complaint that Mr. Justice violated 14 C.F.R. §§ 121.317(f) and (k) by not wearing his safety belt when the FASTEN SEAT BELT sign was lit, and by not complying with instructions given to him by a crewmember. In addition, it was alleged in the complaint that Mr. Justice violated 14 C.F.R. § 91.11, by assaulting and intimidating a flight crewmember and interfering with the performance of the pilot's and flight attendants' duties.

¹¹ Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2)(2000).